

return, then X may claim Child as a dependent in 2009.

Example 19. (i) Y and Z are the divorced parents of Child. In 2003, Y and Z enter into a separation agreement, which is incorporated into a divorce decree, under which Y, the custodial parent, releases Y's right to claim Child as a dependent for all future years. The separation agreement satisfies the requirements for the form of a written declaration in effect at the time it is executed. Z attaches a copy of the separation agreement to Z's returns for 2003 through 2009.

(ii) Under paragraph (e)(1)(ii) of this section, a separation agreement may not serve as a written declaration. However, under paragraph (e)(5) of this section, a written declaration executed in a taxable year beginning on or before July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the written declaration is executed, will be treated as meeting the requirements of paragraph (e)(1) of this section. Therefore, the separation agreement may serve as the written declaration required by paragraph (b)(3)(i) of this section for 2009, and Z may claim Child as a dependent in 2009 and later years.

Example 20. (i) The facts are the same as in *Example 19*, except that in 2009 Y executes a Form 8332 revoking the release of Y's right to claim Child as a dependent for 2010. Y complies with all the requirements of paragraph (e)(3) of this section.

(ii) Although Y executes the separation agreement releasing Y's right to claim Child as a dependent in a taxable year beginning on or before July 2, 2008, under paragraph (e)(5) of this section, Y's execution of the Form 8332 in 2009 is effective to revoke the release. Therefore, section 152(e) and this section do not apply in 2010, and whether Child is the qualifying child or qualifying relative of Y or Z is determined under section 152(c) or (d).

(h) *Effective/applicability date.* This section applies to taxable years beginning after July 2, 2008.

[T.D. 9408, 73 FR 37801, July 2, 2008]

§ 1.153-1 Determination of marital status.

For the purpose of determining the right of an individual to claim an exemption for his spouse under section 151(b), the determination of whether such individual is married shall be made as of the close of his taxable year, unless his spouse dies during such year, in which case the determination shall be made as of the time of such death. An individual legally separated from his spouse under a decree of di-

vorce or separate maintenance shall not be considered as married. The provisions of this section may be illustrated by the following examples:

Example 1. A, who files his returns on the basis of a calendar year, married B on December 31, 1956. B, who had never previously married, had no gross income for the calendar year 1956 nor was she the dependent of another taxpayer for such year. A may claim an exemption for B for 1956.

Example 2. C and his wife, D, were married in 1940. They remained married until July 1956 at which time D was granted a decree of divorce. C, who files his income tax returns on a calendar year basis, cannot claim an exemption for D on his 1956 return as C and D were not married on the last day of C's taxable year. Had D died instead of being divorced, C could have claimed an exemption for D for 1956 as their marital status would have been determined as of the date of D's death.

§ 1.154 Statutory provisions; cross references.

SEC. 154. *Cross references.* (1) For definitions of "husband" and "wife", as used in section 152(b)(4), see section 7701(a)(17).

(2) For deductions of estates and trusts, in lieu of the exemptions under section 151, see section 642(b).

(3) For exemptions of nonresident aliens, see section 873(b)(3).

(4) For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931(e).

[Sec. 154 as amended by sec. 103(c)(2), Foreign Investors Tax Act 1966 (80 Stat. 1551)]

[TD 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974]

ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

§ 1.161-1 Allowance of deductions.

Section 161 provides for the allowance as deductions, in computing taxable income under section 63(a), of the items specified in Part VI (section 161 and following), Subchapter B, Chapter 1 of the Code, subject to the exceptions provided in Part IX (section 261 and following), of such Subchapter B, relating to items not deductible. Double deductions are not permitted. Amounts deducted under one provision of the Internal Revenue Code of 1954 cannot again be deducted under any other provision thereof. See also section 7852(c), relating to the taking into account,

§ 1.162-1

26 CFR Ch. I (4-1-09 Edition)

both in computing a tax under Subtitle A of the Internal Revenue Code of 1954 and a tax under Chapter 1 or 2 of the Internal Revenue Code of 1939, of the same item of deduction.

§ 1.162-1 Business expenses.

(a) *In general.* Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except items which are used as the basis for a deduction or a credit under provisions of law other than section 162. The cost of goods purchased for resale, with proper adjustment for opening and closing inventories, is deducted from gross sales in computing gross income. See paragraph (a) of § 1.161-3. Among the items included in business expenses are management expenses, commissions (but see section 263 and the regulations thereunder), labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see § 1.162-2), advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. No such item shall be included in business expenses, however, to the extent that it is used by the taxpayer in computing the cost of property included in its inventory or used in determining the gain or loss basis of its plant, equipment, or other property. See section 1054 and the regulations thereunder. A deduction for an expense paid or incurred after December 30, 1969, which would otherwise be allowable under section 162 shall not be denied on the grounds that allowance of such deduction would frustrate a sharply defined public policy. See section 162(c), (f), and (g) and the regulations thereunder. The full amount of the allowable deduction for ordinary and necessary expenses in carrying on a business is deductible, even though such expenses exceed the gross income derived during the taxable year from such business. In the case of any sports program to which section 114 (relating to sports programs conducted for the

American National Red Cross) applies, expenses described in section 114(a)(2) shall be allowable as deductions under section 162(a) only to the extent that such expenses exceed the amount excluded from gross income under section 114(a).

(b) *Cross references.* (1) For charitable contributions by individuals and corporations not deductible under section 162, see § 1.162-15.

(2) For items not deductible, see sections 261-276, inclusive, and the regulations thereunder.

(3) For research and experimental expenditures, see section 174 and regulations thereunder.

(4) For soil and water conservation expenditures, see section 175 and regulations thereunder.

(5) For expenditures attributable to grant or loan by United States for encouragement of exploration for, or development or mining of, critical and strategic minerals or metals, see section 621 and regulations thereunder.

(6) For treatment of certain rental payments with respect to public utility property, see section 167(1) and § 1.167(1)-3.

(7) For limitations on the deductibility of miscellaneous itemized deductions, see section 67 and §§ 1.67-1T through 1.67-4T.

(8) For the timing of deductions with respect to notional principal contracts, see § 1.446-3.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6690, 28 FR 12253, Nov. 19, 1963; T.D. 6996, 34 FR 835, Jan. 18, 1969; T.D. 7315, 39 FR 20203, June 7, 1974; T.D. 7345, 40 FR 7437, Feb. 20, 1975; T.D. 8189, 53 FR 9881, Mar. 28, 1988; T.D. 8491, 58 FR 53128, Oct. 14, 1993]

§ 1.162-2 Traveling expenses.

(a) Traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. Only such traveling expenses as are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. If the trip is undertaken for other than business purposes, the travel fares and expenses incident to travel are personal expenses and the meals and lodging are